

1 UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

2 -----x
3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 DAN ZHONG,

7 Defendant.
8 -----x

16-CR-614 (DLI)

United States Courthouse
Brooklyn, New York

December 8, 2016
3:00 p.m.

9 TRANSCRIPT OF CRIMINAL CAUSE FOR ARRAIGNMENT
10 BEFORE THE HONORABLE DORA L. IRIZARRY
UNITED STATES CHIEF DISTRICT JUDGE

11 APPEARANCES

For the Government:

ROBERT L. CAPERS, ESQ.
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: ALEXANDER SOLOMON, AUSA
DOUGLAS PRAVDA, AUSA
IAN RICHARDSON, AUSA

16 For the Defendant:

DORSEY & WHITNEY LLP
51 West 52nd Street
New York, New York 10019
BY: NICK AKERMAN, ESQ.
JOSHUA N. COLANGELO-BRYAN, ESQ.
MICHELLE NG, ESQ.
-and-
THOMAS FITZPATRICK, ESQ.
500 Fifth Avenue
New York, NY 10010

21 Court Reporter:

Georgette K. Betts, RPR, CSR, OCR
Phone: (718) 804-2777
Fax: (718) 804-2795
Email: Georgetteb25@gmail.com

24 Proceedings recorded by mechanical stenography. Transcript
25 produced by computer-aided transcription.

1 THE COURT: Please be seated.

2 No talking in the courtroom.

3 You can call this case.

4 THE COURTROOM DEPUTY: Criminal cause for
5 arraignment, docket number 16-CR-614, United States versus
6 Zhong.

7 Please state your appearances.

8 MR. SOLOMON: Good afternoon, Your Honor, Alex
9 Solomon, Doug Pravda and Ian Richardson for the government.

10 THE COURT: Good afternoon.

11 MR. AKERMAN: Good afternoon, Your Honor, Nick
12 Akerman, Tom Fitzpatrick and Joshua Colangelo-Bryan and
13 Michelle Ng for the defendant. Also seated at the table is
14 the defendant, Mr. Zhong.

15 THE COURT: Good afternoon to all of you. Mr. Zhong
16 is being assisted today by the Mandarin language interpreter.
17 May we have your name, please, for the record.

18 THE INTERPRETER: Good afternoon, Your Honor, my
19 name is Nancy Wu. Last name spelled W-U.

20 THE COURT: Please administer the oath to Ms. Wu.
21 (Interpreter sworn.)

22 THE COURTROOM DEPUTY: Thank you.

23 THE COURT: Before we go anywhere today, the only
24 attorney of record, as far as I am concerned, is Mr. Joshua
25 Colangelo-Bryan, because he is the only attorney who filed a

1 notice of appearance in this case.

2 MR. COLANGELO-BRYAN: No, Your Honor, notices have
3 been filed for Mr. Akerman and --

4 THE COURT: Where?

5 MR. COLANGELO-BRYAN: Those are on the docket.

6 MR. AKERMAN: In fact --

7 THE COURT: Nothing like doing it timely. So you
8 filed it today.

9 MR. AKERMAN: No. A couple of days ago.

10 THE COURT: Excuse me. Today is December 8th,
11 notice of attorney appearance for Ms. Ng.

12 MR. COLANGELO-BRYAN: Right, that was today.
13 Mr. Akerman filed two days ago.

14 THE COURT: Two days ago.

15 MR. COLANGELO-BRYAN: I filed earlier.

16 THE COURT: You filed earlier.

17 MR. COLANGELO-BRYAN: Right.

18 THE COURT: Mr. Fitzpatrick has not filed.

19 MR. FITZPATRICK: Not on the indictment, Your Honor,
20 correct.

21 THE COURT: Nor on the complaint either. You just
22 showed up at the arraignment on the complaint. That's not
23 filing a notice of appearance.

24 MR. FITZPATRICK: I'll rectify that immediately,
25 Your Honor.

1 THE COURT: Those are the rules of the Court and I
2 expect the rules to be followed.

3 Now, the defendant has been indicted, he has not
4 been arraigned on the indictment, so I want to address that
5 first. Unless there is something you want to address before
6 that, Mr. Solomon?

7 MR. SOLOMON: No, we believe we should proceed to
8 the arraignment first.

9 THE COURT: Who is going to take the lead for
10 Mr. Zhong from defense counsel?

11 MR. AKERMAN: I will, Your Honor.

12 THE COURT: If you could remain seated and speak
13 into the microphone.

14 MR. AKERMAN: Sure.

15 THE COURT: Have you received a copy of the
16 indictment on behalf of your client, Mr. Akerman?

17 MR. AKERMAN: Yes, we have.

18 THE COURT: And have you reviewed it with your
19 client?

20 MR. AKERMAN: Yes, we did.

21 THE COURT: Did you review it with the assistance of
22 a Mandarin language interpreter?

23 MR. AKERMAN: Yes, we did. We reviewed it with an
24 attorney, Ms. Ng, who is an attorney with us who speaks
25 Mandarin.

1 THE COURT: Are you fluent in the Mandarin language,
2 Ms. Ng?

3 MS. NG: I am, Your Honor.

4 THE COURT: Am I pronouncing your name correctly?

5 MS. NG: You are, Your Honor.

6 THE COURT: Thank you. And do you read and write in
7 Mandarin as well?

8 MS. NG: I do.

9 THE COURT: And, Mr. Zhong, the government has
10 charged you with the following under Count One with a forced
11 labor conspiracy, in that on or about -- in or about and
12 between January 2010 and November 2016, both dates being
13 approximate and inclusive, within the Eastern District of New
14 York and elsewhere, the Eastern District includes the counties
15 of Brooklyn -- of Kings, Queens, Staten Island, Nassau and
16 Suffolk County. The defendants Dan Zhong and Landong Wang,
17 together with others, did knowingly and intentionally conspire
18 to (1) provide and obtain the labor and services of one or
19 more persons by means of (a) physical restraint, (b) serious
20 harm and threats of serious harm to such persons and other
21 persons, (c) the abuse and threatened abuse of law and legal
22 process and, (d) a scheme, plan and pattern intended to cause
23 such persons to believe that if they did not perform such
24 labor and services they would suffer serious harm and physical
25 restraint contrary to Title 18 of the United States Code

1 Section 1589(a) and (2) benefit, financially and by receiving
2 one or more things of value from participation in a venture
3 that engaged in such acts, knowingly and in reckless disregard
4 of the fact that such venture had engaged in the providing and
5 obtaining of labor and services by any of such means, contrary
6 to Title 18, United States Code, Section 1589(b).

7 Count Two is the substantive count relating to Count
8 One of forced labor, in that in or about and between
9 January 2010 and November 2016, both dates being approximate
10 and inclusive, within the Eastern District of New York and
11 elsewhere, the defendants Dan Zhong and Landong Wang, together
12 with others, did knowingly and intentionally (1) provide and
13 obtain the labor and services of one or more persons by means
14 of (a) physical restraint, (b) serious harm and threats of
15 serious harm to such persons and other person, (c) the abuse
16 and threatened abuse of law and legal process and (d) a
17 scheme, plan and pattern intended to cause such persons to
18 believe that if they did not perform such labor and services
19 they would suffer serious harm and physical restraint and (2)
20 benefit, financially and by receiving one or more things of
21 value from participation in the venture that engaged in such
22 acts, knowingly and in reckless disregard of the fact that
23 such venture had engaged in the providing and obtaining of
24 labor and services by any of such means.

25 Count Three charges you with concealing passport and

1 immigration documents in connection with the forced labor
2 charge of counts relating to Counts Two and One, in that in or
3 about and between January 2010 and November 2016, both dates
4 being approximate and inclusive, within the Eastern District
5 of New York and elsewhere, the defendants Dan Zhong and
6 Landong Wang, together with others, did knowingly and
7 intentionally conceal, remove, confiscate and possess one or
8 more actual and purported passports and other immigration
9 documents of one or more persons (a) in the course of one or
10 more violations of Title 18 of the United States Code,
11 Sections 1589 and Title 18, United States Code,
12 Section 1594(a), (b) with intent to violate Title 18, United
13 States Code, Section 1589, and (c) to prevent and restrict and
14 to attempt to prevent and restrict, without lawful authority,
15 one or more persons' liberty to move and travel, in order to
16 maintain the labor and services of such persons when such
17 persons were and had been victims of a severe form of
18 trafficking in persons, as defined in Section 103 of the
19 Trafficking Victims Protection Act of 2000, to wit: The
20 recruitment, harboring, transportation, provision, and
21 obtaining of one or more persons for labor and services
22 through the use of force and coercion for the purpose of
23 subjection to debt bondage.

24 Count Four charges alien smuggling conspiracy, in
25 that in or about between January 2014 and November 2016, both

1 dates being approximate and inclusive, within the Eastern
2 District of New York and elsewhere, the defendants Dan Zhong
3 and Landong Wang, together with others, knowingly and in
4 reckless disregard of the fact that one or more aliens had
5 remained in the United States in violation of law, did
6 knowingly and intentionally conspire to transport and move
7 such aliens within the United States by means of
8 transportation, in furtherance of such violation of law, and
9 for the purpose of commercial advantage and private financial
10 gain contrary to Title 8 of the United States Code, Sections
11 1324 subdivisions (a)(1)(A)(ii) and 1324(a)(1)(B)(i).

12 Count Five charges visa fraud conspiracy, in that in
13 or about and between January 2010 and November 2016, both
14 dates being approximate and inclusive, within the Eastern
15 District of New York and elsewhere, the defendants Dan Zhong
16 and Landong Wang, together with others, did knowingly and
17 intentionally conspire to utter, use, attempt to use, possess,
18 obtain, accept and receive one or more documents prescribed by
19 statute or regulation for entry into and as evidence of
20 authorized stay and employment in the United States, knowing
21 such documents to have been procured by means of one or more
22 false claims and statements and otherwise procured by fraud
23 and unlawfully obtained, contrary to Title 18 of the United
24 States Code, Section 1546(a).

25 In furtherance of the conspiracy and to effect its

1 objects, within the Eastern District of New York and
2 elsewhere, the defendants Dan Zhong and Landong Wang, did
3 commit and cause to be committed, among others the following:
4 And the following Overt Acts are included in the indictment.

5 A. On or about December 10, 2014, Wang sent an
6 electronic communication to Zhong in which Wang sought Zhong's
7 assistance to arrange for workers to enter the United States
8 from the People's Republic of China to perform work contrary
9 to the terms of their United States visas.

10 B. In or about June 2015, Zhong and Wang caused
11 workers to provide contracting work at a residence in Old
12 Brookville, New York -- you want to talk, take it outside.
13 Caused workers to provide contacting work at a residence in
14 Old Brookville, New York, contrary to the terms of their
15 United States visas.

16 C. In or about August 2015, Zhong sent an
17 electronic communication to an accessory, an individual whose
18 identity is known to the grand jury, (Accessory number 1),
19 concerning the use of workers to provide labor in the United
20 States, contrary to the terms of their United States visas, at
21 a residence in Old Brookville, New York.

22 D. In or about September 2015, Zhong and Accessory
23 Number 1 engaged in electronic communications concerning the
24 use of workers to provide contracting work at a residence in
25 Flushing, New York, contrary to the terms of their United

1 States visas.

2 E. In or about October 2015, Zhong and Wang caused
3 workers to provide contracting work at a residence in Fresh
4 Meadows, New York, contrary to the terms of their United
5 States Visas.

6 F. In or about October 2015, Wang possessed
7 workers' passports and visas at a residence in Fresh Meadows,
8 New York.

9 The indictment also contains a criminal forfeiture
10 allegation as it relates to Counts One through Three, meaning
11 that the government intends to seek to forfeit any assets that
12 may have been derived from the conduct that's alleged in
13 Counts One through Three.

14 There is also a criminal forfeiture allegation that
15 is being alleged in the indictment as to Counts Four and Five.
16 Again, the government is going to look to forfeit assets and
17 any profits that may have been derived as a result of the
18 conduct alleged in Counts Four and Five.

19 How does your client plead to these charges,
20 Mr. Akerman?

21 MR. AKERMAN: Not guilty, Your Honor.

22 THE COURT: There are various applications that are
23 before the Court, two are from the government and one from the
24 defendant relating to the bail. Let me address the
25 government's issues first, and then we will address the bail.

1 Do you wish to proceed, Mr. Solomon?

2 MR. SOLOMON: Yes. I believe the first issue was
3 the issue of whether this case should be designated as
4 complex. As reflected in our December 5th, 2016, letter we
5 believe it should in light of extraordinarily voluminous
6 discovery in this matter. With respect to subpoena returns
7 alone we're over 250,000 pages.

8 Additionally, we expect that there will be
9 classified litigation in this case and in light of those two
10 factors primarily, Your Honor, as well as the fact that much
11 of the discovery is in Chinese language, we believe this case
12 should be designated as complex.

13 MR. AKERMAN: May I respond, Your Honor?

14 THE COURT: Yes.

15 MR. AKERMAN: Your Honor, we do not believe this
16 case should be designated as complex. It is a fairly
17 straightforward case. Just a few issues. Did the Chinese
18 workers perform work on places other than Chinese government
19 properties, one. Were the Chinese workers subjugated under
20 bondage contracts? These are fairly straight issues. We are
21 prepared to go to trial 30 days from the filing of the
22 indictment. There is nothing complex about these particular
23 issues.

24 There is the issue about the visas and whether
25 anybody had knowledge ahead of time that they actually created

1 false visas, that's a fairly straightforward issue, too. And
2 I think it's the government that decided to bring the case
3 when they did. We are ready to go to trial. And we would ask
4 that this case be put down for trial in 30 days from the date
5 of the indictment.

6 THE COURT: You wish to respond?

7 MR. SOLOMON: I'm a little bit surprised that
8 Mr. Akerman is ready to go to trial without having reviewed
9 the more than 250,000 pages of discovery in this case, or
10 having had us review our classified holdings and possibly make
11 classified disclosure to the defense. I think he's creating a
12 potential situation where, should there be a conviction in
13 this case, to create the eventuality of an ineffective
14 assistance claim by Mr. Zhong and we oppose that.

15 MR. AKERMAN: I don't think so at all, Your Honor.
16 This is a fairly straightforward case. The documents he's
17 referring to are lots of documents that have no relevance to
18 the issues that I mentioned. They were turned over by the
19 company.

20 This is a case that the government chose to bring at
21 this time and we have the manpower and we want to go ahead and
22 try this case as soon as possible.

23 THE COURT: The case is deemed complex for the
24 reasons that have been stated by the government and the
25 government is representing that it has discovery to turn over

1 to the tune of over 250,000 pages of documents, some of which
2 are in the Chinese language which will have to be translated.

3 There is also the potential of use of classified
4 information. There are procedures to follow under the CIPA
5 statute and that certainly merits the classification as
6 complex.

7 MR. AKERMAN: If I might, Your Honor.

8 THE COURT: I've heard enough argument on it, thank
9 you. I gave you the opportunity to respond to the government.

10 The second issue from the government.

11 MR. SOLOMON: Sorry, one moment please, Your Honor.

12 THE COURT: Yes. It was the matter of the relation
13 of the case to the Ying case.

14 MR. SOLOMON: Yes, Your Honor, I apologize. We
15 believe that this case should be related to the Ying Lin case.
16 As we articulate in our letter to the Court, some of the work
17 that was done improperly, we allege, by Zhong's workers was at
18 Ying Lin's residence and at her condominium. In fact, the use
19 of the workers was in violation of their visa status in the
20 United States. These facts are essential to Ying Lin's
21 prosecution. We believe that there would be considerable
22 savings and judicial economy by having both cases presided
23 over by Your Honor.

24 THE COURT: Just for the record, that case is under
25 docket number 15-CR-601.

1 MR. SOLOMON: Yes, Your Honor.

2 THE COURT: Mr. Fitzpatrick, although not having
3 filed a notice of appearance, had responded by letter on
4 December 5th opposing the relation. I don't know who wants to
5 address it, whether you want to address it, Mr. Akerman, or
6 Mr. Fitzpatrick.

7 MR. AKERMAN: Maybe I could just briefly, Your
8 Honor.

9 THE COURT: Yes.

10 MR. AKERMAN: I think the standard here is whether
11 or not there's a savings of judicial resources as to whether
12 this should be a related case, and in this particular case
13 there is, like, a slight overlap in the two cases factually.
14 Two different juries are going to have to consider the same
15 issues, there is no savings of judicial resources. So there
16 is nothing that is going to be learned from one case that will
17 be applied to another case.

18 It's really just a policy matter for Your Honor in
19 terms of the operation of the Court whether or not this is
20 something that the Court would deem as being a savings of
21 judicial resources. We just don't see it that way, but it's
22 up to Your Honor of course.

23 THE COURT: Do you wish to respond?

24 MR. SOLOMON: No, Your Honor.

25 THE COURT: I'm going to deem the two cases related.

1 Apparently, Mr. Fitzpatrick didn't understand that I'm
2 assigned to both cases randomly. So I don't know whether
3 there was a thought that this case was going to somebody else
4 or that the Lin case was assigned to somebody else, but that
5 case also involves the potential for classified information
6 and some of the same use of these construction workers at the
7 property and presumably some of the same evidence. That's my
8 understanding from reviewing the letter from the government --

9 MR. SOLOMON: That's correct, Your Honor.

10 THE COURT: -- and based on what I understand and
11 know from presiding over the Ying Lin case. So they are both
12 deemed related.

13 Is there anything else that the government wishes to
14 address?

15 MR. SOLOMON: No, Your Honor.

16 THE COURT: Okay. With respect to bail, you know,
17 Mr. Akerman, you and Mr. Colangelo-Bryan were before me for a
18 very lengthy period of time in the Senator Sampson case and so
19 it surprises me that the procedures that you all should know
20 very well in my chambers have not been followed here.

21 I get a last minute, 200-plus page document dated
22 December 6th, despite the fact that you should be aware that I
23 require two copies of everything, hard copies of everything
24 and my deputy reached out to ask for a copy of it because this
25 apparently was docketed at some point in the afternoon on

1 December 6th. It was taken to the Clerk's Office instead of
2 to my chambers and it should not have required my deputy to
3 have to call to ask for a courtesy copy. So, as a result, I
4 got this yesterday morning.

5 MR. AKERMAN: I'm sorry, Your Honor, we thought --

6 THE COURT: Not only that --

7 MR. AKERMAN: -- this was given to you.

8 THE COURT: -- but then there was a last minute
9 reply that was filed this morning -- this afternoon at
10 1:00 o'clock.

11 MR. AKERMAN: We just got the government's
12 yesterday.

13 THE COURT: Excuse me. Well they got very little
14 time to respond to your 200 some odd page tome as well.

15 MR. AKERMAN: We had no time to respond initially.

16 THE COURT: Excuse me, I'm talking. I'm not done
17 talking yet.

18 My deputy was told by somebody in your office that a
19 courtesy copy was on its way to chambers, and I did not get a
20 courtesy copy until after you arrived here, Mr. Akerman, this
21 afternoon.

22 Now the question before me really is why I should
23 even consider any bail application since the defendant has
24 already had three bites at the apple with respect to bail.
25 The same arguments apparently have been raised by the defense

1 before Magistrate Judge Arlene Lindsay, who arraigned the
2 defendant on the complaint, then there was a second bail
3 application that was made in front of Judge Reyes, and then
4 Judge Johnson addressed bail in this case and he wound up
5 reversing the decision of Judge Reyes and entering an order of
6 detention in this case.

7 Now, unless there is something -- excuse me. I
8 don't know how many times do I have to say, there is only one
9 person talking at a time here and it's either myself or the
10 attorneys in the well.

11 From what I can see, nothing has been raised that is
12 new and different that was not raised before any of these
13 three judges.

14 MR. AKERMAN: May I address this, Your Honor?

15 THE COURT: Yes.

16 MR. AKERMAN: First of all, there were not three
17 bites of the apple. Magistrate Judge Lindsay did not consider
18 bail, it was not Magistrate Lindsay. Judge Reyes --

19 THE COURT: I read the transcript just before coming
20 here today and bail was discussed, Mr. Fitzpatrick was present
21 at the time --

22 MR. AKERMAN: And it was --

23 THE COURT: -- the government had submitted a letter
24 opposing bail and requesting an order of detention --

25 MR. AKERMAN: She put --

1 THE COURT: -- there was -- there was a discussion
2 on the record in the transcript concerning the nature of the
3 charges, concerning a package that was proposed on behalf of
4 Mr. Zhong by Mr. Fitzpatrick, there was a response by the
5 government, that's a bail hearing.

6 MR. AKERMAN: She put over the bail hearing, Your
7 Honor. She did not decide the bail, she put it over --

8 THE COURT: She put in an order of temporary
9 detention.

10 MR. AKERMAN: That's right. And put it over to be
11 decided at a later date, which Judge Reyes then decided in
12 favor of bail, decided on a bail package. It then went to
13 Judge Johnson, where in 15 minutes -- I mean, just to give you
14 an idea of what happened. It was an hour and a half before
15 Judge Reyes where this was considered, hashed out, arguments
16 were made, and then it was immediately appealed to Judge
17 Johnson, who did not have the benefit of any of that argument.
18 It all lasted less than 15 minutes. Mr. Fitzpatrick was not
19 permitted to finish his argument.

20 In response to a question by Judge Johnson,
21 Mr. Solomon said, the case will be indicted in 30 days. Judge
22 Johnson then asked Mr. Solomon, how long will the trial take?
23 Mr. Solomon responded, a week or two, this is at page 12.

24 We know that when Mr. Solomon estimates trials he's
25 usually off by about a hundred percent on these things --

1 THE COURT: You know what? You can really leave the
2 smarmy remarks out of it.

3 MR. AKERMAN: Well, based on these representations
4 about the timing of the indictment and the length of trial,
5 Judge Johnson immediately remanded the defendant without
6 making any findings on the record. There was no mention
7 before Judge Johnson of classified information. There was no
8 mention of there being three months about CIPA issues, about
9 being that addressed. There was no mention about Mr. Zhong's
10 counsel would have to get security clearances. There was no
11 mention of hundreds of thousands of pages of discovery. There
12 was nothing about the trial being complex. There was nothing
13 about having to wait indefinitely until a co-defendant could
14 be retrieved from China, which is basically an impossibility
15 in this case. Judge Johnson could well have concluded that
16 the entire case would be completed in a couple months when he
17 remanded Mr. Zhong.

18 Now there is new information. At the time,
19 Mr. Fitzpatrick was not aware of the details relating to the
20 actual charges in this case. He was not in a position at that
21 hearing before Judge Reyes to challenge the strength of the
22 allegations. We have now had a chance to translate certain
23 documents, including this so-called bondage contract, because
24 we have a lawyer on the team who reads and speaks Mandarin so
25 we can communicate more easily with our client who does not

1 speak English.

2 THE COURT: The issue of bail -- a bail hearing is
3 not a place to have mini trial. The Second Circuit has spoken
4 on that, that's Black letter law, okay? And the other thing
5 is, if you were dissatisfied with the ruling by Judge Johnson,
6 okay, then your option was to go up to the circuit and argue
7 it to the circuit --

8 MR. AKERMAN: Or our option was to take --

9 THE COURT: -- but you have not presented --

10 MR. AKERMAN: -- it before the judge the case was
11 assigned to.

12 THE COURT: And you insist on talking while I am
13 talking and you are going to stop that now.

14 MR. AKERMAN: Sorry. Go ahead.

15 THE COURT: I have your permission to continue?

16 MR. AKERMAN: You may continue.

17 THE COURT: Thank you.

18 The bottom line is that none of the arguments that
19 have been raised really raise anything new here. If anything,
20 there has been an indictment, a grand jury of this district
21 has found probable cause to believe that a crime has been
22 committed and that your client committed it.

23 MR. AKERMAN: May I respond, Your Honor?

24 THE COURT: Yes.

25 MR. AKERMAN: One of the factors for the Court to

1 consider is the strength of the government's allegations. We
2 were not able to respond to that part of the bail proceeding
3 at the first hearing because no one had done enough
4 investigation. Since that time we have learned that this
5 so-called bondage contract was mistranslated by the
6 government. That their language in there was translated in
7 the light most favorable to the government, most notably the
8 word "escape" was put into the contract, which is not correct
9 in Mandarin, it does not mean escape. There's a number of
10 pieces like that. We never had a chance to argue that or put
11 evidence before Judge Reyes, or Judge Johnson, even if he
12 would have allowed it, we couldn't have done that.

13 We couldn't put in the evidence about the
14 location --

15 THE COURT: You are not getting it, that a bail
16 hearing is not a mini trial and it's not a place to start
17 going on some fishing expedition --

18 MR. AKERMAN: We're not saying it is.

19 THE COURT: -- or presenting witnesses with respect
20 to the strength of the government's case.

21 MR. AKERMAN: That's certainly a factor.

22 THE COURT: That's certainly a, a factor, I will
23 grant you that, the strength of the government's case. The
24 defendant is facing 20 years in jail, he is not a U.S.
25 citizen. His construction company apparently has an office

1 in -- it's not the consulate of the PRC.

2 MR. SOLOMON: The Mission to the United Nations.

3 THE COURT: The Mission to United Nations. Among
4 the allegations in the indictment that was voted by a grand
5 jury of this district, is that he engaged in visa fraud and
6 thus has access to people who would engage in that kind of
7 practice.

8 The co-defendant has already absconded. If the
9 defendant absconds there is very little likelihood of any
10 extradition from the PRC.

11 MR. AKERMAN: May I respond?

12 THE COURT: No, I am not going to hear this, because
13 the bottom line is that if you want -- you had your recourse
14 already, as I said, three times, three different judges have
15 heard this.

16 MR. AKERMAN: So I cannot respond?

17 THE COURT: No. I am not going to have you respond.
18 If you want to appeal Judge Johnson's decision, then you go up
19 to the circuit, but you are not going to start attacking --
20 coming at this piecemeal because, frankly, within the number
21 of days that that hearing was held before Judge Johnson to
22 today, has not been a very lengthy period of time. And if you
23 want a more fulsome hearing then, quite frankly, it's going to
24 have to be put over to a date when I can actually consume all
25 of this reasonably and not get sandbagged. And I am not going

1 to hear the regurgitation of the same arguments all over
2 again.

3 Does the government wish to be heard?

4 MR. SOLOMON: No, Your Honor.

5 THE COURT: I mean, some of the requested conditions
6 were already considered, the home detention and the electronic
7 monitoring, a cash amount. The defendant's home, which is
8 apparently now subject to criminal forfeiture. Surrendering
9 passports, given the access to the Chinese mission that
10 doesn't really matter for much. A lot of the issues that the
11 defense has raised, his ties to the United States, that was
12 all considered by Judge Reyes.

13 And if you wanted me to consider what was discussed
14 in front of Judge Johnson, the appropriate thing was to have
15 provided me with a transcript of that proceeding, but I don't
16 act as an appellate court to Judge Johnson.

17 So what I will do is this: Even though I don't
18 think that you are entitled to another bail application, I
19 will let you have your time to let me consider this and I will
20 put this over to a date in January to consider it. But let's
21 get this understood now, that I am not going to hear piecemeal
22 applications and piecemeal arguments and repetitive arguments.

23 Are the parties available on January 9th at noon?

24 MR. SOLOMON: Yes, Your Honor.

25 MR. AKERMAN: Yes. One moment.

1 THE COURT: This will also give the government an
2 opportunity -- the government had requested that if the Court
3 put this over to consider the defendant's bail application,
4 the government wanted an opportunity to provide something
5 more -- a more fulsome response.

6 MR. SOLOMON: Yes, Your Honor.

7 THE COURT: Can you have a response to me by
8 January 3rd?

9 MR. SOLOMON: Yes, Your Honor.

10 MR. AKERMAN: Judge, that's fine with us.

11 THE COURT: Two copies, please.

12 Excuse me?

13 MR. AKERMAN: That works.

14 THE COURT: I will need two hard courtesy copies
15 immediately upon filing.

16 MR. SOLOMON: Yes, Your Honor.

17 THE COURT: Now my understanding, from speaking to
18 Harry Rucker, who is the person from the Department of Justice
19 who handles the security clearances and other issues
20 concerning classified information, is that the process of
21 defense counsel getting security clearance has been started at
22 this point.

23 Am I correct about that?

24 MR. SOLOMON: Yes, Your Honor.

25 THE COURT: As to all counsel?

1 MR. SOLOMON: As to all three.

2 THE COURT: Because there is new counsel has -- all
3 three?

4 MR. SOLOMON: Yes.

5 THE COURT: Which three?

6 MR. AKERMAN: Four.

7 MR. SOLOMON: I'm sorry. I apologize, all four. I
8 forgot there were four today.

9 MR. AKERMAN: Is that right? Because no one has
10 contacted me about this. What are they going by just our
11 information that's filed with the Court?

12 MR. SOLOMON: Yes.

13 MR. AKERMAN: Okay.

14 THE COURT: So eventually you will be contacted and
15 there is a whole process that goes to that.

16 Now it has been related to the -- this case has been
17 related to the Ying Lin case, which is a little further ahead
18 as far as the CIPA motions and so on. So I don't know, given
19 that defense counsel is not cleared yet in this case, I don't
20 know that the time is ripe yet for setting a CIPA motion.

21 MR. SOLOMON: Your Honor, we have a fair bit of work
22 to do before we reach that point. We'll try to do that in the
23 next month or two.

24 THE COURT: So that would be something that -- the
25 status of that is something that I would like to discuss on

1 January 9th.

2 MR. SOLOMON: Yes, Your Honor.

3 THE COURT: I assume the discovery is ongoing or has
4 been turned over already.

5 MR. SOLOMON: We have not started to turn over
6 discovery, we'll enter into a protective order with the
7 defense and we'll do that promptly.

8 THE COURT: Okay. Anything else other than time is
9 excluded, this case has been deemed complex?

10 MR. SOLOMON: No, Your Honor, thank you.

11 THE COURT: Anything else from the defense?

12 MR. AKERMAN: I don't think so, Your Honor.

13 THE COURT: Mr. Fitzpatrick, you will file a notice
14 of appearance today please.

15 MR. FITZPATRICK: Yes, Your Honor.

16 THE COURT: All right. Marshals, you can take
17 charge. Thank you, Ms. Wu, it's a pleasure always.

18 MR. SOLOMON: Thank you, Your Honor.

19 (Matter concluded.)

20 * * * * *

21 I certify that the foregoing is a correct transcript from the
22 record of proceedings in the above-entitled matter.

23 s/ Georgette K. Betts

December 9, 2016

24 GEORGETTE K. BETTS

DATE